


Testimony to SSDP hearing for ELST Segment 2B

The interim ELST is generally centered on the rail bed used by various railroad companies for over 100 years. During the time that the railroad was operating, trees and other vegetation grew adjacent to the rail bed. King County constructed the interim ELST by adding crushed rock to the rail bed and fences to either side for safety. The interim trail opened in 2006; no trees were removed and other vegetation was minimally impacted.

The centerline of the paved trail proposed in the 60% plans often deviates from the centerline of the interim trail by 5 feet or more. The Rails-to-Trails Act gave the County an easement to construct the trail. The purpose of the Act is to preserve rail corridors for future rail use while letting the rail bed be used as a trail.

King County falsely claims ownership of the entire corridor and that it is now a public park. The County acquired the corridor via Quit Claim and thus has all the rights of the previous owners. The County's claim of ownership is false because the previous owners mostly only held easements and in some cases no easement whatsoever. The County also claims ownership based on a Federal Court opinion (Pechman) that is under appeal to the 9th Circuit Court. This opinion affects exactly 1 easement (Hilchkanun) and 5 cases where the previous owners had no easement. The current owners of the parcels with no easement are currently suing King County in State Court to constrain the trail to the land used by the railroad.

While the Hearing Examiner cannot decide who owns the land, restricting the centerline of the paved trail to the centerline of the rail bed would eliminate many of the issues raised by the affected property owners and better preserve the shoreline environment. Shifting the alignment creates unnecessary environmental impacts in some areas, and in other areas is being done at the expense of **long-established resident enhancements for no environmental benefit.** This condition also would be consistent with the spirit of the Rails-to-Trail Act to allow trails to be constructed on rail beds until needed in the future for rail use. The Act did not intend for rail corridors to be turned into public parks; especially when the railroad never owned fee interest of the underlying land.

 x96
APRIL 2006

Ownership Research Report:

Owner: George W. Raab (a.k.a. George W. Raab, Jr.),
and
Donna Marie Matrinez (as Trustee under the George W. Raab
Qualified Personal Residence Trust under Agreement dated
December 21, 1992).

King County Tax Account Number: 322506-9241

Section (32), Township (25), North, Range (06), East, W. M.

LEGAL DESCRIPTION:

That portion of Government Lot 3 and the Northeast Quarter of the Southwest Quarter of Section 32, Township 25 North, Range 06 East, W.M., in King County, Washington, described as follows: Commencing at the Intersection of the Westerly Line of the Northern Pacific Railway Company's Right of Way with the East-West Center Line of said Section;

Thence South 38° 05' 37" West 282.99 feet;

Thence North 51° 54' 23" West 190 feet, more or less, to the Westerly Line of said Government Lot;

Thence Northeasterly along said Lot Line to the Northwest Corner thereof;

Thence Easterly along said Lot Line to the Point of Beginning;

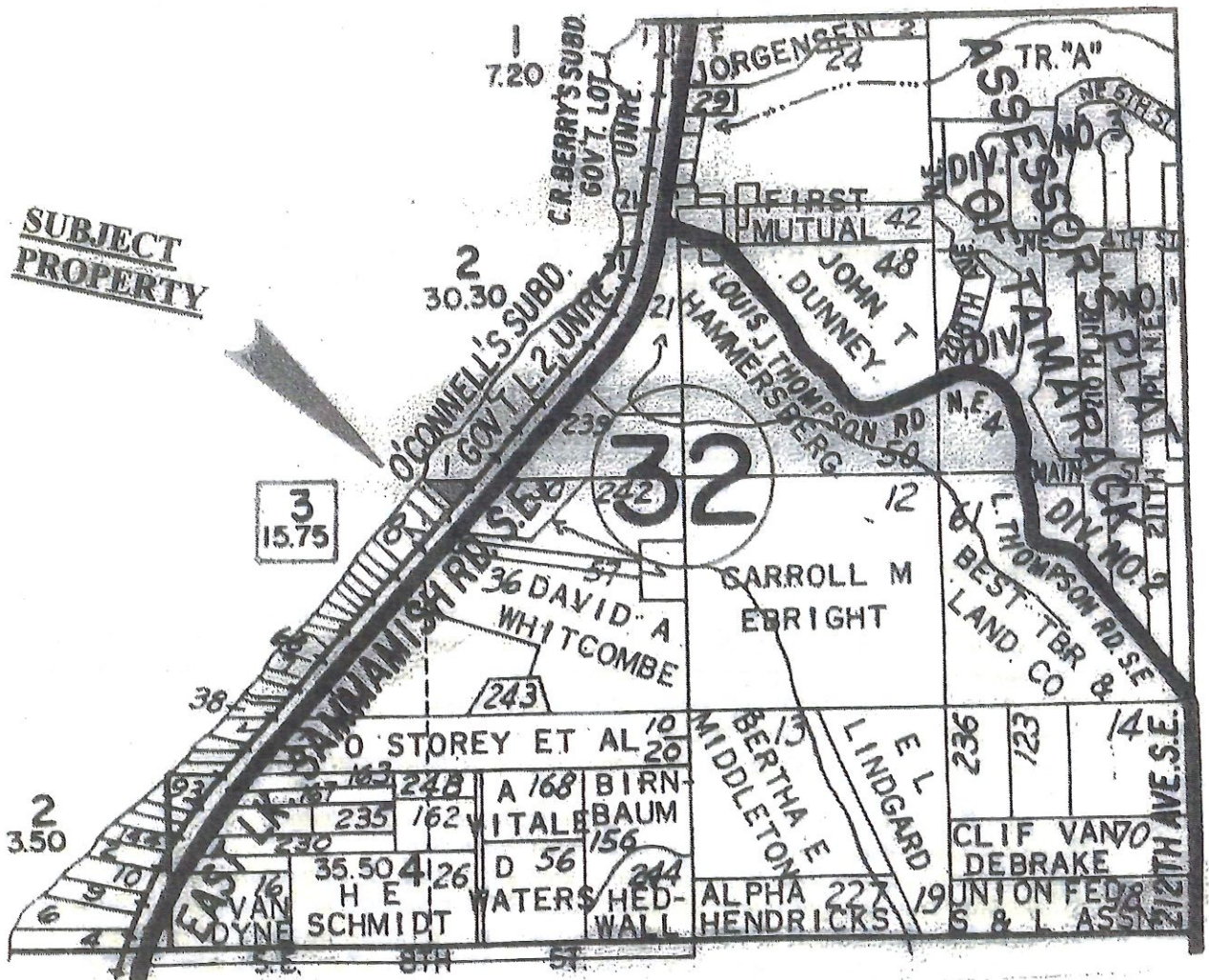
Together With Second Class Shorelands of Lake Sammamish, as conveyed by the State of Washington, adjoining and abutting thereon; EXCEPT that portion thereof lying Southwesterly of the following described line: Commencing at a point in the Westerly Margin of the Northern Pacific Railway Company's Right of Way, distant 162.99 feet measured along said Westerly Margin, from the East-West Centerline of said Section, as established by the Unrecorded Plat of Ebright's Sammamish Shores and Waterfront Tracts; Thence North 56° 31' 01" West 186.60 feet; Thence North 51° 54' 23" West to the outer limits of said Second Class Shorelands.

ALL OF WHICH IS DESCRIBED AS LYING WESTERLY OF THE WESTERLY MARGIN OF THE RAILROAD RIGHT OF WAY.

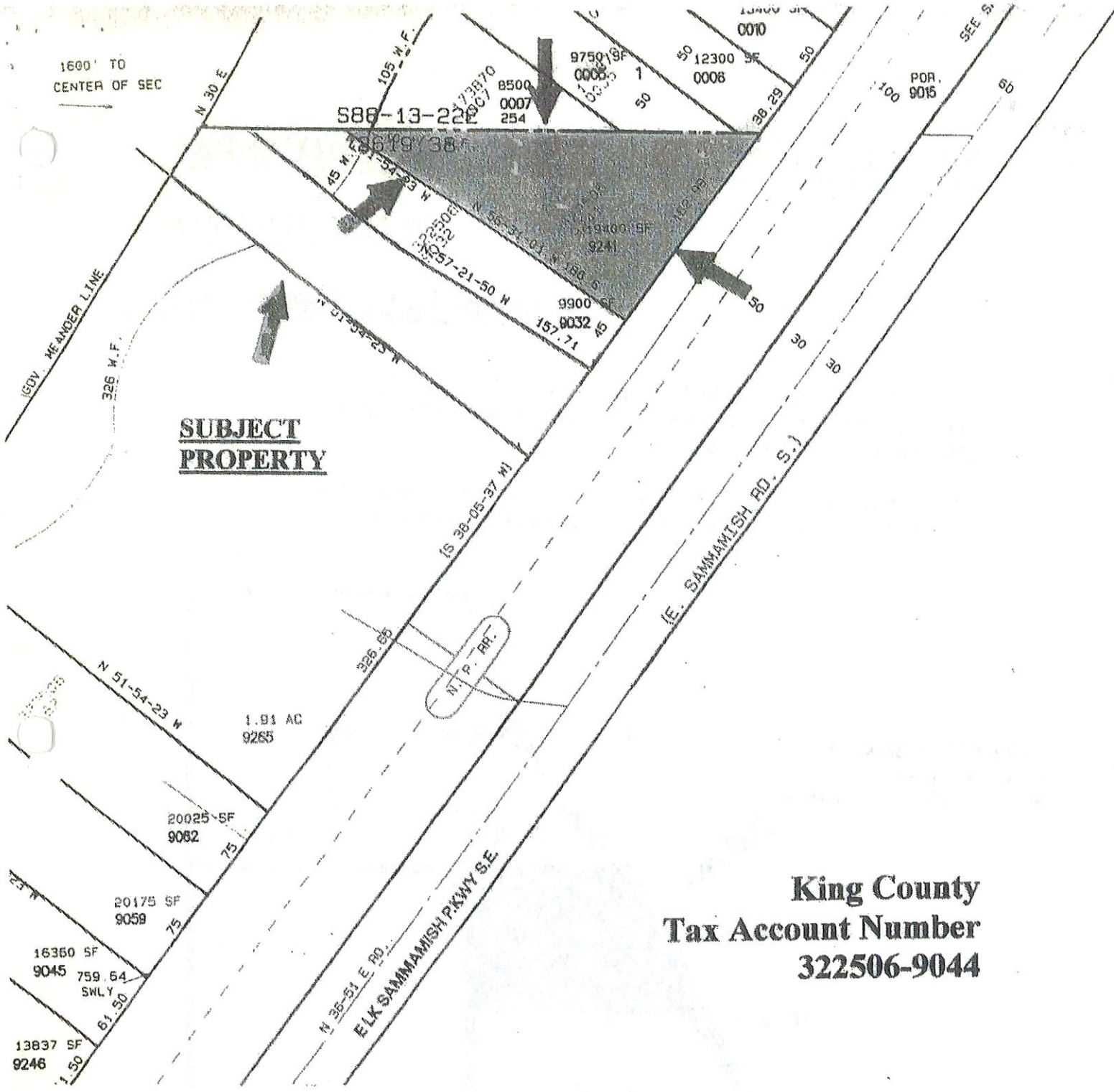
The afore legally described property is herein referenced, mapped, described, and defined based upon its current mapping as a Tax Lot by the King County Assessor's Office.

(Hereinafter "Subject Property")

**See Copy of Kroll Map – Attachment 1
See Copy King County Assessor's Map - Attachment 2**



Copy – Kroll Map
ATTACHMENT 1



**SUBJECT
PROPERTY**

**King County
Tax Account Number
322506-9044**

**Copy – King County Assessor’s Map
ATTACHMENT 2**

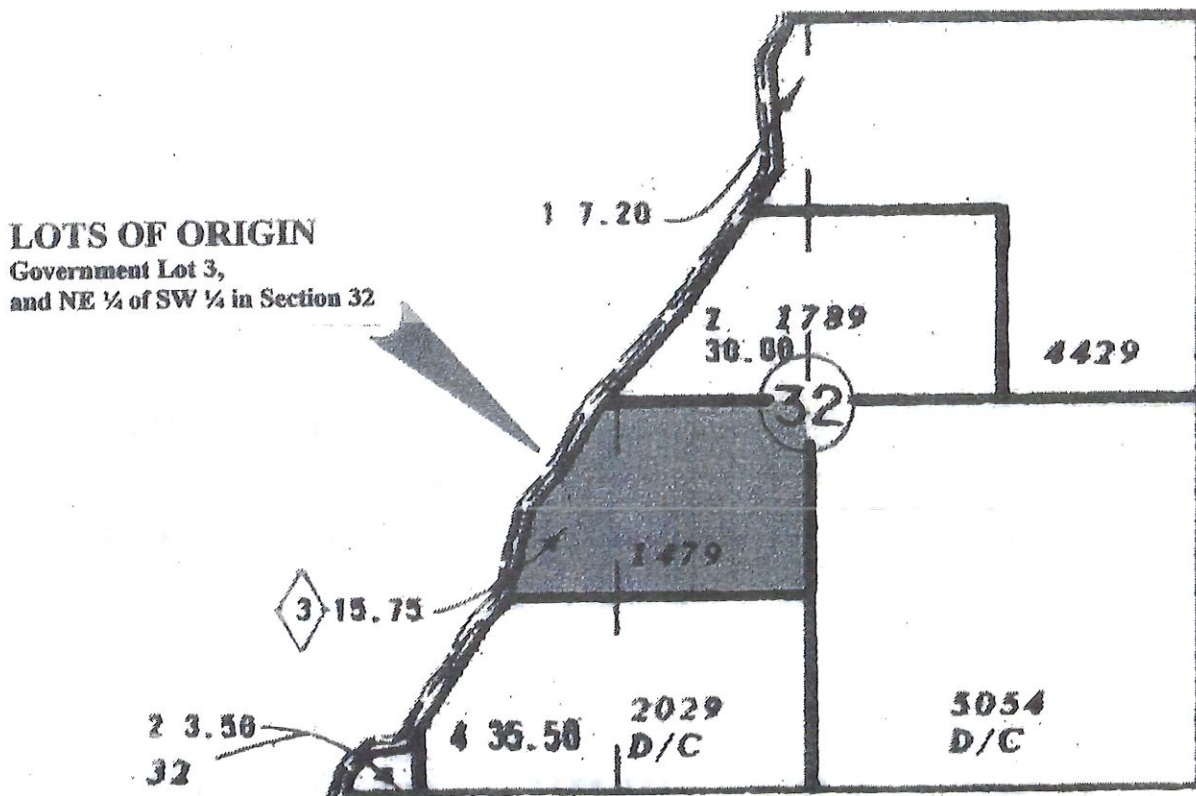
Summaries, Analyses, and Opinions:

SECTION ONE:

Original Land Settlement:

Government Lot 3 and the Northeast Quarter of the Southwest Quarter
All lying within Section 32, Township 25, North, Range 06 East W.M.
(Hereinafter "Lots of Origin")

The Subject Property was subdivided from a portion of Government Lot 3
As well as a portion of said Northeast Quarter of the Southwest Quarter.



MASTER TITLE PLAT

Source: (General Land Office) Bureau of Land Management

Manner of Land Settlement:

Homestead - Act of 1862 and Acts Supplemental thereto.
Including Section 2291 of Revised Statutes of the United States and Act of March 3, 1875

Settler: Bill Sbedzue (a.k.a. Sbedzues or Sbedzuse)
Entry Date: June 28, 1876
Entry Number: 2553
Final Certificate Date: September 04, 1882
Final Certificate Number: 1479
Patented: February 03, 1883
Area: 55.75 acres

Entry:

Entry Date: June 28, 1876

Bill Sbedzue was approved for Entry upon the Lots of Origin by the General Land Office of the United States Government in Olympia, Territory of Washington on June 28, 1876. His Entry was granted under the provisions of the Homestead Act of 1862, provisions of the Act of Congress of March 03, 1875, and provisions of Congressional Amendments thereto - Entry Number 2553.

Final Certificate:

Final Certificate Date: September 04, 1882

Bill Sbedzue was successful in completing his prescribed obligations under the Homestead Acts and did receive his Final Certificate - Number 1479.

With that Final Certificate, his ownership was no longer subject to Homestead Act Obligations.

Patent:

Patent Date: February 03, 1883

The issuance of the Patent by the United States Government to Bill Sbedzue stood as certain notice that his ownership was granted in Fee Simple Absolute Estate.

That Patented ownership was taken without any defects, encumbrances, reservations, or exceptions except the following, where applicable:

Recorded: Those noted on the face of his recorded Patent: To Wit:

"... subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws, and decisions of courts and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law, upon the express condition that the title hereby conveyed shall not be subject to alienation or encumbrances either by voluntary conveyance or by judgement drawn or order of any court or subject to taxation of any character but shall remain inalienable and not subject to taxation for the period of twenty years from the date hereof."

Unrecorded: Those that may have been intended to be promulgated by the notice served through applicable Federal Legislation.

Summaries, Analyses, and Opinions:

SECTION TWO: Original Railroad Right of Way Grant:

Conveyance:

Right of Way Deed (Vol. 42 Pg. 254 recording # 13452)

Grantor:

Bill Sbedzue (a.k.a. Bill Sbedzuse or Bill Sbedzues)
Lucinda Sbedzue (a.k.a. Lucinda Sbedzuse or Lucinda Sbedzues)

Grantee:

Seattle, Lake Shore, and Eastern Railroad Company.

Deed Date:

May 06, 1887

Area of Encumbrance:

Portions of the Lots of Origin:

Government Lot 3 and the Northeast Quarter of the Southwest Quarter of Section 32

Railroad Right of Way – Original Grant

On May 06, 1887, Bill Sbedzue and Lucinda Sbedzue (Grantor) conveyed to the *Seattle, Lake Shore, and Eastern Railroad Company* a Right of Way by way of a Right of Way Deed. That Document granted certain and limited easement rights, benefits, uses, and privileges to that Railroad Company for the specific purposes of locating, constructing, and operating its railroad.

The legal description of that conveyance document transferred a right of way easement 50 feet in width on each side of its centerline which was said to have been surveyed across the Grantors' property.

To Wit: "Such right of way strip to be fifty (50) feet in width on each side of the center line of the railway track as located across our said lands by the Engineer of said Railway Company which location is described as follows, To Wit: Beginning at a point 3760 feet West from $\frac{1}{4}$ Section corner on East boundary of Section 32, T 25 N., R. 6 E and running thence S $36^{\circ}36'$ W. 1710 feet to South boundary of Lot 3 of said Section 32 said Township, said Range, which point is 1320 feet North and 350 East from SW corner of said Section 32. Said line is in Lot 3 and N. E. $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 32."

(Hereinafter "Deeded Right of Way")

See Copy-King County Assessor's Map – (Section 2 – Attachment 1)

Additionally, easement areas of two hundred (200) feet wide on each side and outboard of the afore described Deeded Right of Way easement were granted to the Railroad Company for the purpose of cutting down dangerous trees.

(Hereinafter "*Maintenance Property*")

See Copy-King County Assessor's Map – (Section 2 – Attachment 2)

Upon extinguishment of the easement, the Subject Property may claim full and unencumbered possessory ownership rights, uses, and benefits to that specific portion of the Deeded Right of Way which lies adjacent to or crosses the Subject Property.

(Hereinafter "*Subject Property Deeded Right of Way*")

See Copy-King County Assessor's Map – (Section 2 – Attachment 3)

Upon extinguishment of the easement, the Subject Property may claim full and unencumbered possessory ownership rights, uses, and benefits to that specific portion of the Maintenance Property which lies adjacent to or crosses the Subject Property.

(Hereinafter "*Subject Property Maintenance Property*")

See Copy-King County Assessor's Map – (Section 2 – Attachment 4)

Note

There exists no record in the chain of title from the original grantee or any successors in interest (Railroad Companies) to the currently claimed and "so called successors in interest" (King County) for the Deeded Right of Way.

Railroad Operating Property:

That portion of the *Seattle, Lake Shore, and Eastern Railroad Company's* railroad trackage which was actually constructed over the Lot of Origin was not located nor originally constructed within the Deeded Right of Way (Reference: the Map of Definite Location "as-constructed") nor is it presently located within that Deeded Right of Way.

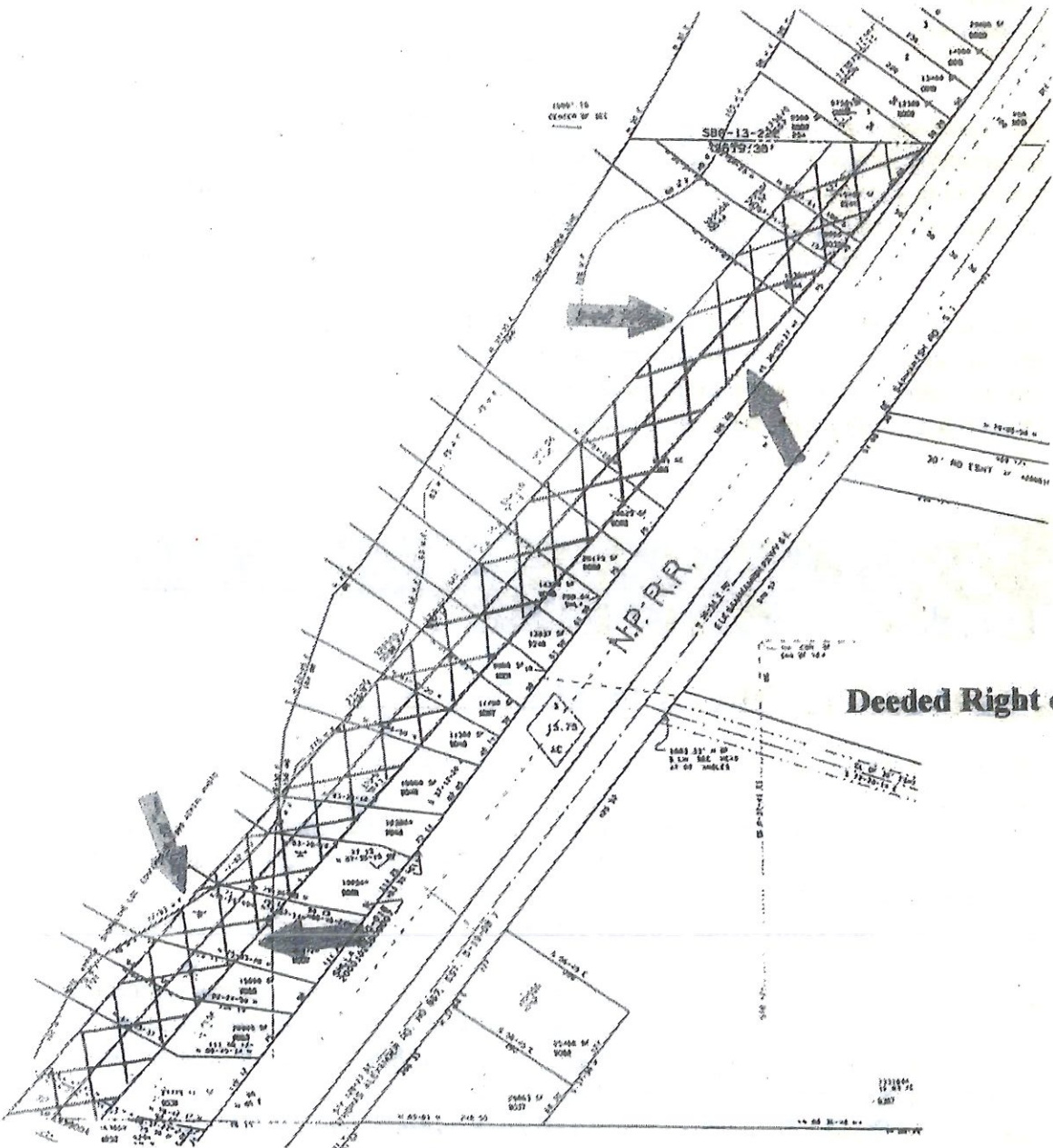
(Hereinafter "*As-Built Trackage and Alleged Right of Way*")

See Copy-King County Assessor's Map – (Section 2 – Attachment 5)

The portion of As-Built Trackage which was constructed adjacent to, upon, or otherwise crossing the Subject Property, or the projected Northerly and Southerly boundaries thereof, and actually located upon an alignment which differs from the Deeded Right of Way and for which there exists no recorded granting document.

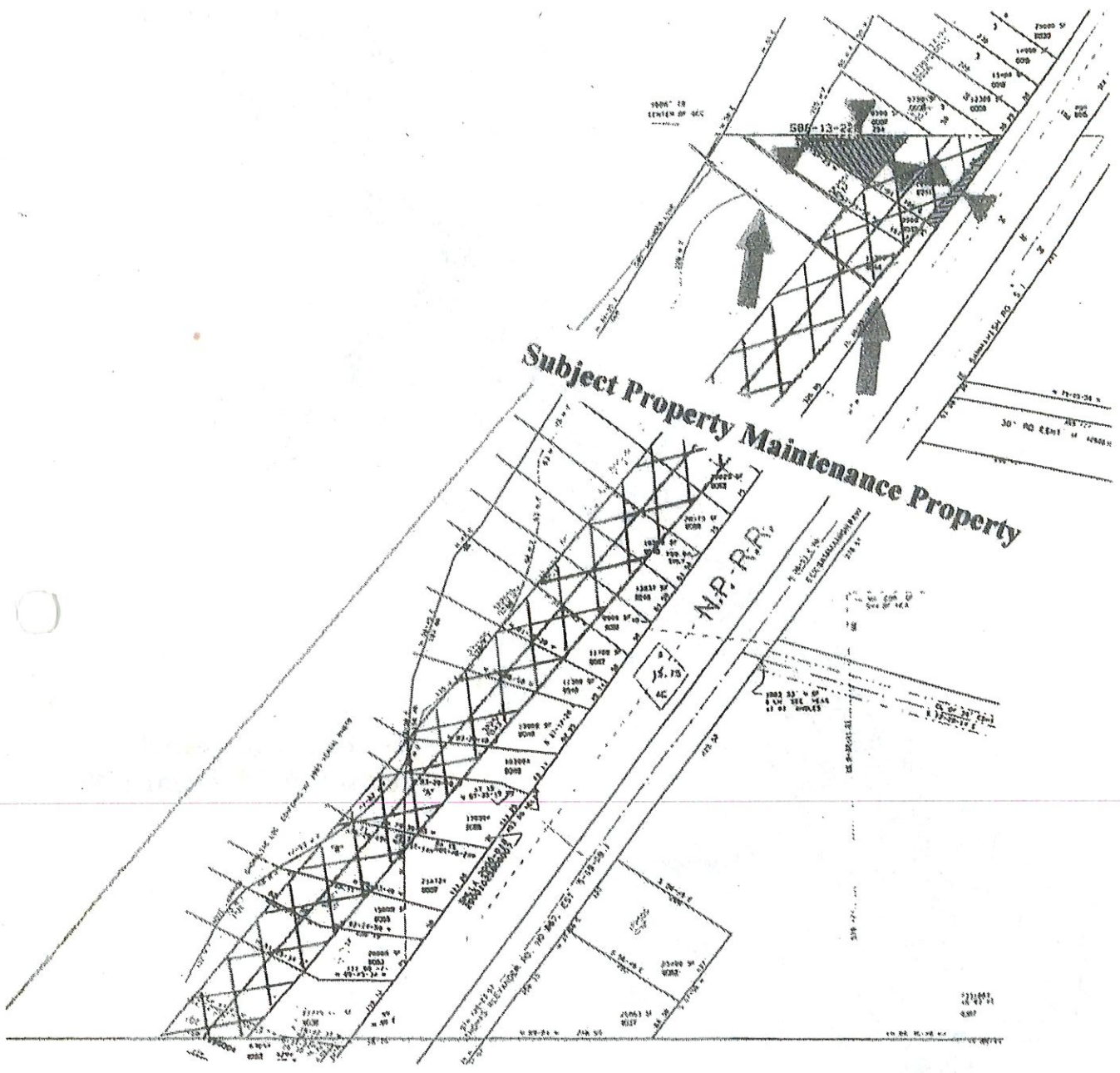
(Hereinafter "*Subject Property As-Built Trackage and Alleged Right of Way*")

See Copy-King County Assessor's Map – (Section 2 – Attachment 6)

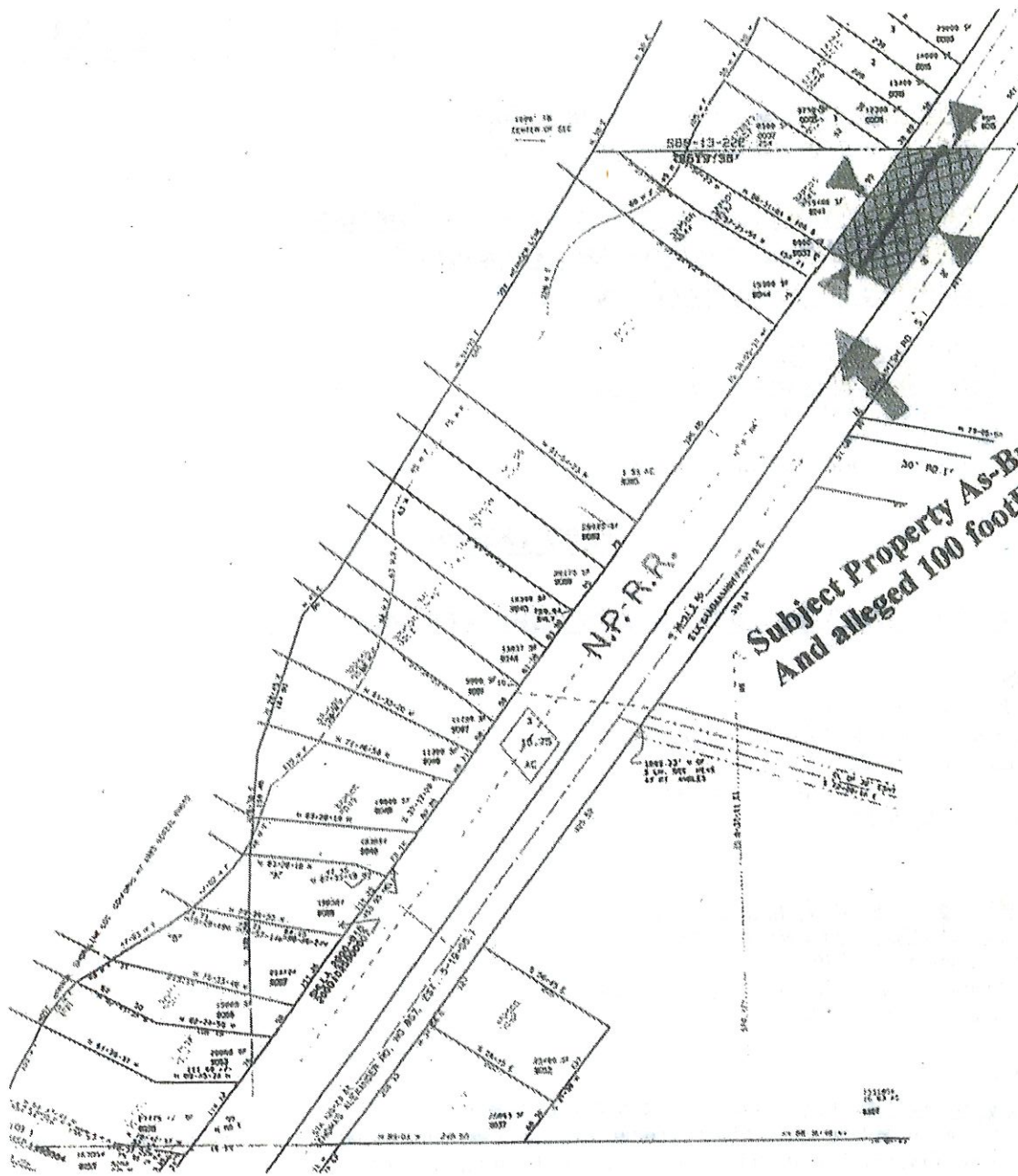


Deeded Right of Way

**“Deeded Right of Way”
SECTION 2 – ATTACHMENT 1**



**“Subject Property Maintenance Property”
SECTION 2 – ATTACHMENT 4**



**Subject Property As-Built Trackage
And alleged 100 foot Right of Way**

**"Subject Property As-Built Trackage and Alleged Right of Way"
SECTION 2 – ATTACHMENT 6**

Summaries, Analyses, and Opinions:

SECTION THREE:

Chronology of Railroad Corporate Actions Including Incorporation, Location, Construction

"Seattle, Lake Shore, and Eastern Railroad Company"

"Seattle and International Railroad Company"

"Northern Pacific Railway Company"

SUBJECT TRACKAGE

East Lake Sammamish Railroad Right of Way

2nd. Twenty (20) Mile Segment

(m.p.20 to m.p.40)

Seattle to Sallal Prairie Main Line (63.32 miles)

Key Dates:

"Seattle, Lake Shore, and Eastern Railroad Company"

1885

Articles of Incorporation

Incorporating *Seattle, Lake Shore, and Eastern Railroad Company*

Signed April 25, 1885;

Filed with Sec. of the Territory April 28, 1885;

Recorded May 5, 1885

1886

Supplemental Articles of Incorporation,

Seattle, Lake Shore, and Eastern Railroad

Signed January 11, 1886;

Filed with Sec. of the Territory August 10, 1886;

Recorded August 10, 1886

1887

Map of Definite Location ("Line of Intended to be Located Route")

The 2nd Twenty Mile Segment Map of Definite Location was approved by the United State's Secretary of Interior (GLO) - July 5, 1887 - document numbered 69284.

That approved Map was filed with the Olympia Land Office on July 22, 1887.

1887

Construction commenced - May 1887

2nd. Twenty (20) Mile Segment

Southeast Quarter of Section 8, Township 26, North, Range 5 East W. M. to a point in

Northwest Quarter of Section 34, Township 24, North, Range 6 East W. M

1888

Construction finished – March 1888

2nd. Twenty (20) Mile Segment

Southeast Quarter of Section 8, Township 26, North, Range 5 East W. M. to a point in
Northwest Quarter of Section 34, Township 24, North, Range 6 East W. M

1888

Corporate Acquisition - March 24, 1888

The Company acquired the *Seattle and West Coast Railway Company*.

1888

Operations begin

Woodinville to Falls City - May 29, 1888

1891

Map of Plan and Profile of Definite Location of Constructed Route

Affidavit filed by Railroad Chief Engineer - April 9, 1891

Affidavit filed by Railroad President - April 9, 1891

Recorded – April 15, 1891

“Seattle and International Railroad Company”

1896

Articles of Incorporation

Incorporating Seattle and International Railroad Company

Signed June 22, 1896;

Recorded June 30, 1896

1896

Take Over – July 28, 1896

Seattle, Lake Shore and Eastern Railroad Company

taken over by

Seattle and International Railroad Company

Sold at foreclosure May 16, 1896, after receivership had begun June 26, 1893, to a committee of bondholders, who, by deeds dated July 28, 1896, acquired the SLSE trackage west of the Cascades equal to 166.22 miles.

1896

Supplemental Articles of Incorporation,

Signed September 25, 1896 and Recorded September 26, 1896.

1900

Resolution

Signed June 13, 1900 and Recorded August 8, 1900.

“Northern Pacific Railway Company”

1901

Take Over – 1901

The Seattle International Railroad Company

Taken over by

Northern Pacific Railway Company

Deed dated March 21, 1901 – Deeds' General Index – Direct – King County, WA

Vol. 265, Page 594 – Filed under Number 207061

Summaries, Analyses, and Opinions:

SECTION FOUR:

Key Dates:

Lots of Origin And Right of Way Grant:

- June 28, 1876 Settler and Entryman Bill Sbedzue received official Governmental recognition of his Entry under and subject to certain conditions of the Homestead Acts and Amendments thereto.
- September 04, 1882 Government issues Final Ownership Certificate to Bill Sbedzue.
- February 03, 1883 Date of Patent recording
- May 06, 1887 *Right of Way Deed* granted to *Seattle, Lake Shore, and Eastern Railroad Company* by Bill Sbedzue and Lucinda Sbedzue.
- July 05, 1887 *Map of Definite Location ("Line of Intended Route")*
Approved by United States Secretary of Interior –
Seattle, Lake Shore, and Eastern Railroad
- April 09, 1891 *Map of Plan and Profile ("Line as Constructed")*
Affidavit filed by Railroad Chief Engineer and
Affidavit filed by Railroad President
- April 15, 1891 *Map of Plan and Profile ("Line as Constructed")*
Filed of Record with
United States' Secretary of the Interior

The explicitness of facts relating to Equitable Interest and Possessory Rights include, but are not limited to, the specific Act(s) of Settlement and the other statutory requirements under which the applicant has entered his claim.

The Patentee's certain and specific Fee Simple Absolute property rights are subject, only, to applicable statutory provisions and common laws in place at the time of entry.

Summaries, Analyses, and Opinions:

SECTION FIVE:

Railroad Right of Way:

Fee Simple Ownership

Versus

Easement Rights:

Others' opinions have focused upon the question of whether or not the Deeded Railroad Right of Way granted by Bill Sbedzue and Lucinda Sbedzue to the *Seattle, Lake Shore, and Eastern Railroad Company* over his settled lands was a grant in fee simple ownership or simply an easement grant to the Railroad Company.

One such rendered opinion has concluded that the specific right of way granted in this case was a grant in fee simple estate. Such an opinion subscribes to either a deficit of information or a willful neglect of facts.

In conjunction with King County, DDES, Management, I have participated in developing Departmental Policies relating to rights of way including ownership versus easement issues. In rights of way cases involving the DDES determinations of Separate Lot Status or Boundary Line Adjustment compliance, conclusive proof of easement or fee ownership status is a fundamental tenet of the review process. The primary test for such compliance with State and County Subdivision Laws considers, as evidence, the makers' intent as demonstrated in the instrument of conveyance.

Included in the types of rights of way for which I have been called upon to clearly demonstrate and evidence either fundamental ownership rights or beneficial easement rights are State, County, and City Roadways as well as railroad and utility corridors.

Historically, deed forms used to convey strips of property for such rights of way as county roads or railroads included Quit Claim and Statutory Warranty. King County, DDES considers language which burdens the estate conveyed as qualifying the conveying instrument even if that document is titled a Statutory Warranty Deed. While the title or heading of a deed coupled with certain granting language (i. e. convey, warrant, bargain, sell, etc.) may appear explicit, King County, and other governmental agencies, hold that is not always the case.

King County has consistently and reliably applied the same rules of interpretation of deed construction and makers' intent to all rights of way whether road or railroad. Whether in Statutory Warranty, Quit Claim, or other deed form, rights of way deeds which bear the following embodied language examples are considered easement creating instruments, only.

To Wit:

"... for the consideration of _____ Dollars and of the benefits to accrue to the Grantor(s) by reason of laying out and establishing a public road through their property"

OR

"In consideration of the benefits to accrue to the Grantor(s) by the location of and laying out and establishing a public road through their property"

AND

"... hereby grant and convey

OR

"... hereby convey and warrant ..."

AND

"for use of the public forever, as a public road, all interest in the following described property"

Agencies in King County which have certainly held that such language "qualifies the conveying deed" and "creates only an easement" include the Department of Transportation, Roads and Engineering Division, DDES, LUSD, and the King County Prosecutor's Office.

"... The land Use Services Division will treat abandoned ... corridors as separate lots under the following provisions: 1. The road corridor or reserve was transferred in fee ownership as a real estate conveyance. ... corridors which were transferred in right of use only will not ...
(i. e. deeds containing words such as "for road purposes"). ..."

King County, DDES, Policy Letter – August 31, 1995

"... regarding old rights-of-way ... the following criteria will be used ...
2. The original acquisition of the proposed separate lot which caused the lot creation was in fee title, and not right of use or similar conditions. ..."

King County, DDES, Policy Letter – February 11, 1999

The conveyance of a public road or similar right of way is limited to the right to use the burdened property for specific uses. References include *Rainier Avenue Corporation v. City of Seattle*, 80 Wn.2d (1972).

Also, those same agencies have held, upon abandonment, relinquishment, or vacation, any created easements interests in any right of way which are held in less than fee simple estate revert to the contiguous property owner or to the grantor, his heirs, successors, or assigns. References include *Woehler v. George* 65 Wn (1965); *London v. Seattle* 93 Wn (1980); *Johnston v. Medina Improvement Club*, 10 Wn.2d 44, 116 P.2d 272 (1941); *Rowe v. James*, 71 Wash. 267, 128 Pac. 539 (1912); and *Gifford v. Horton*, 54 Wash. 595, 103 Pac. 988 (1909).

The language used in the Right of Way Deed granted to *Seattle, Lake Shore, and Eastern Railroad Company* by Bill Sbedzue and Lucinda Sbedzue (May 06, 1887) embodies the epitome of qualifying and restricted use language as applied and defined by King County.

"Right of Way Deed"

AND

"In consideration of the benefits and advantages to accrue to us from the location construction and operation of the . . . Railway . . . we do hereby donate grant and convey unto said . . . Railway Company a right of way . . . to have and to hold the said premises with the appurtenances . . . forever."

The language of the title, or heading, (*"Right of Way Deed"*) as well as the embodied language (*"In consideration of the benefits and advantages to accrue to us from the location construction and operation of the . . . Railway . . . we do hereby donate grant and convey unto said . . . Railway Company a right of way . . . to have and to hold the said premises with the appurtenances . . . forever."*) certainly and definitively is qualifying language which clearly establishes the intent of the makers to create an easement instrument with absolute cessation of easement rights upon relinquishment or abandonment by the Railroad Company.

Intentionally and legally compliant with the makers' intent to create a right of way easement, the structure and language of their Right of Way Deed to the Railroad c. May 06, 1887 – followed the Laws of the Territory of Washington at that time.

The following is a time, place, and manner review of some of the applicable and governing Laws.

The Legislature of the Territory first passed legislation considering the subject of forms for conveyances of real estate April 28, 1854.

"Title VI. Conveyances

Chapter 1. – DEEDS, ETC., WHAT CONSTITUTES

No. 341. – An Act Relating To Deeds

Ss 1. Conveyances of Real Estate, etc., Shall be by Deed. –

Section 1. Be it enacted, etc. That all conveyances of real estate, or any interest therein, and all contracts creating or evidencing any encumbrance upon real estate, shall be by deed."

The Legislature of the Territory further discussed the subject of deed forms and subsequently passed amending legislation including this example in 1886. Those Laws were in effect from the date approved.

"No. 348

An Act Concerning Conveyances Of Real Estate, And Providing A Form For Deeds, Mortgages And Certificates Of Acknowledgments, And Declaring The Effect Thereof.

Ss 1. Conveyances of Real Estate, etc., Shall be by Deed. –

Section 1. Be it enacted, etc.

That all conveyances of real estate, or any interest therein, and all contracts creating or evidencing any encumbrance upon real estate, shall be by deed."

Territory of Washington – Tenth Bien. Sess. 1885-86, p.177
Approved January 21, 1886

The operative words include "all conveyances", "any interest therein", "all contracts creating or evidencing any encumbrance", and "shall be by deed".

In the Acts, the only deed forms created were the *Warranty, Bargain and Sale, and Quit Claim* Forms.

In their purest forms, the *Warranty Deeds and Bargain and Sale Deeds* incorporated concise and intentional language and clearly intended for the fee simple conveyance of real estate.

However, when the mandatory use of a deed form was used to convey less than fee simple ownership – in compliance with the intent of the Legislature – ("*... all conveyances of real estate or any interest therein ...*"), the makers were bound to modify and qualify the prescribed language of the usual deed form of fee conveyance in such a way so as to create a deed form that conveyed something other than the fee interest.

The specific deed form granted to *Seattle, Lake Shore, and Eastern Railroad Company* by Bill Sbedzue and Lucinda Sbedzue was a modified deed form. In fact, that specific deed form titled itself "*Right of Way Deed*". Such a title certainly declared and served notice of its makers' intent to limit the scope of conveyance.

Rather, a modified deed form of less than fee was created so as to comply with the Laws that mandated the following:

"... all conveyances of real estate, or any interest therein, creating or evidencing any encumbrance upon real estate, shall be by deed ...".

Any study of any instrument of conveyance must consider the time, place, and manner of its creation. Also, I suggest, to ascertain the intent of the grantor and grantee, one must engage and include the implications of the written language used in the document based upon the vernacular uses of that language. Whenever possible, the basis for conclusions formulated regarding the intent of the Parties of any instrument should be found in the instrument with a time, place, and manner application of laws and language.

"The history of the times in which a statute was enacted may properly be considered in determining its meaning."

Great Northern Railway Company v. United States 315 U. S. 262

"In considering a deed, like any other written instrument, the primary and all-important consideration is the intention of the parties as gathered from the instrument."

Cravens v. White 73 Tex. 577, 11 S. W. 543 15 Am. St. Rep. 803

Additional and collateral evidences generally indicating the intent of the makers of conveying instruments and the notions of easement benefits versus the transfer of complete fee ownership possession in Railroad rights of way are found in the numerous Court Cases and other opinions relating to such Federal Acts as the Act of July 2, 1864 and the Railroad *Right of Way Act of March 3, 1875*.

In reviews of several questions relating to ownership of lands underlying rights of way, the United States Supreme Court included the following:

"The Right of Way Act of March 3, 1875, granting to the railroads the right of way through public lands of the United States, grants an easement only, not a fee, and confer no right to oil and minerals underlying the right of way."

"This construction of the Act is supported by its language, its legislative history, its early administrative interpretation, and the construction placed upon it by Congress in subsequent enactments."

"The general rule of construction that any ambiguity in a grant is to be resolved in favor of the sovereign grantor – nothing passes but what is conveyed in clear and explicit language . . ."

"The history of the times in which a statute was enacted may properly be considered in determining its meaning."

Great Northern Railway Company v. United States 315 U. S. 262

Reasonably, the *Seattle, Lake Shore, and Eastern Railroad Company* would not have assumed a need nor conjured up an intention for a portion of its right of way to be part easement (portion acquired under the Act of 1875) and the rest fee (Rights of Way Deeds from settlers). Also, any intended fee transfers would have certainly used the deed forms that had recently been prescribed by law - Warranty Deeds without modification – not the forms used, in fact.

"The Act was designed to permit the construction of the railroads through the public lands and thus enhance their value and hasten their settlement. The achievement of that purpose does not compel a construction of the right of way grant as conveying a fee title to the land and the underlying minerals; a railroad may be operated though its right of way be but an easement."

Great Northern Railway Company v. United States 315 U. S. 279

"In view of fact that railroad's right of way under sections 934 to 939 of this title is but an easement, the railroad has no right to underlying . . ."

301 et seq. of Title 30.

Great Northern R. Co. v. U. S., Mont. 1942 62 S. Ct. 529,

315 U. S. 262. 86 L. Ed. 836

West's United States Code Annotated Title 43 – Public Lands

Real Property Taxes:

The separate assignment of a Real Property Tax Account Number which differed from the Tax Account Number of the property from which the Right of Way easement had been taken had no bearing, whatsoever, in subdivisional fact nor in affirmation of a fee simple transfer.

The Laws of the Territory of Washington had provided such rights of way as included in roadways and railways were not to be included in the Tax Account of the property from which they had been derived or previously attached.

I do not go to the questions of Deeded Right of Way versus As-Built Trackage under this Tax Subject.

To Wit:

"No. 670. - An Act To Provide For The Assessing And Collecting Of County And Territorial Revenue.

Ss. 12. Rights-of-Way, etc., Shall Not be Assessed as Part of Adjacent Property. - Sec. 36. No real estate used by railway corporations for road-beds shall be included in the assessment to individuals of the adjacent property, but all such real estate shall be deemed to be the property of such companies for the purposes of taxation: nor shall real estate occupied or used as a public highway be assessed and taxed as part of adjacent lands from whence the same was taken for such purposes."

Ss. 13. Assessments of Rights-of-way. - 37. The land occupied and claimed exclusively as the right-of-way for railroads by railroad companies or corporations, with the track and all the substructions and superstructures which support the same, must be assessed as a whole, and as real estate, . . . all such real estate . . . occupied and claimed by any railroad company as such right-of-way shall be deemed to be the property of such company for the purpose of taxation, whether the same be government land or otherwise."

**Laws of the Territory of Washington - Approved November 14, 1879
(Seventh Bien. Sess. 1879, p. 3.)**

Summaries, Analyses, and Opinions:

SECTION SIX:

Ownership Chronology:

Historic Ownership:

Deeded Right of Way:

(See Illustration - Section 2 Attachment 1)

The *Right of Way Deed* from the Grantors Bill Sbedzue and Lucinda Sbedzue conveyed only limited easement rights to the *Seattle, Lake Shore and Eastern Railroad Company* (Grantee) for the expressed and limited purposes of locating, constructing, and operating a railroad.

The property underlying the easement grant was retained by Grantors Bill Sbedzue and Lucinda Sbedzue in fee simple estate subject only to the reasonable uses of the Railroad Company in the pursuit of their expressed and limited purposes of locating, constructing, and operating a railroad.

Further, the Railroad Company was not possessed of an Exclusive Easement; but, rather, a Non Exclusive Easement.

Therefore, neither the Railroad Company, nor any Successor In Interest thereto, may compromise or regulate any rights, benefits, uses, and privileges associated with the underlying fee ownership beyond the Railroads Company's declared needs associated with their locating, constructing, and operating a railroad.

Maintenance Property:

(See Illustration - Section 2 Attachment 2)

The *Right of Way Deed* from the Grantors Bill Sbedzue and Lucinda Sbedzue conveyed only very narrow and specific easement rights to the *Seattle, Lake Shore and Eastern Railroad Company* (Grantee). Therefore, neither the Railroad Company, nor any Successor In Interest thereto, may compromise or regulate the rights, benefits, uses, and privileges associated with the underlying fee ownership beyond the Railroad Company's expressed needs.

The property underlying the easement grant was retained by Grantors Bill Sbedzue and Lucinda Sbedzue in fee simple estate.

Due to the ultimate subdivision of the Parent Parcel, the fee ownership interests retained and held by Bill Sbedzue and Lucinda Sbedzue were eventually conveyed and transferred to subsequent property owners.

All subsequent fee ownership rights have been subject to the original easement rights of the Railroad Right of Way since the original conveyance on May 06, 1887.

The *Seattle International Railroad Company* acquired the easement rights to the Specific Operating Property and the Specific Maintenance Property on July 28, 1896. Those rights were subsequently transferred to their assignees.

As-Built Trackage and Alleged Right of Way:

(See Illustration - Section 2 Attachment 5)

That portion of the *Seattle, Lake Shore, and Eastern Railroad Company's* railroad trackage which was actually constructed over the Lot of Origin was not located nor originally constructed within the Deeded Right of Way (Reference: the Map of Definite Location "as-constructed") nor is it presently located within that Deeded Right of Way.

Current Ownerships:

Subject Property Deeded Right of Way:

(See Illustration - Section 2 Attachment 3)

The current fee ownership appears vested in:

Lotta M. & Frank R. Ebright

Also described as:

Those Certain Heirs of Carroll Malcolm Ebright, Sr.,

To Wit: Kathryn D. Ebright; Carroll Malcolm Ebright, Jr.;

Margaret Hornecker (Formerly Margaret Ebright)

As disclosed in the First American Title Insurance Company Litigation
Guarantee for the George Raab Case.

Subject Property Maintenance Property:

(See Illustration - Section 2 Attachment 4)

The current fee ownership lying west of the Deeded Right of Way appears
vested in:

George W. Raab (a.k.a. George W. Raab, Jr.),

And Donna Marie Martinez (as Trustee under the George W. Raab Qualified
Personal Residence Trust under Agreement dated December 21, 1992.

The current fee ownership lying east of the Deeded Right of Way appears
vested in:

Lotta M. & Frank R. Ebright

Also described as:

Those Certain Heirs of Carroll Malcolm Ebright, Sr.,

To Wit: Kathryn D. Ebright; Carroll Malcolm Ebright, Jr.;

Margaret Hornecker (Formerly Margaret Ebright)

As disclosed in the First American Title Insurance Company Litigation
Guarantee for the George Raab Case.

"Subject Property As-Built Trackage and Alleged Right of Way" :

(See Illustration - Section 2 Attachment 6)

The current fee ownership appears vested in:

Lotta M. & Frank R. Ebright

Also described as:

Those Certain Heirs of Carroll Malcolm Ebright, Sr.,

To Wit: Kathryn D. Ebright; Carroll Malcolm Ebright, Jr.;

Margaret Hornecker (Formerly Margaret Ebright)

As disclosed in the First American Title Insurance Company Litigation Guarantee for the
George Raab Case.

Summaries, Analyses, and Opinions:

SECTION SEVEN:

Title Guarantees:

First American Title Insurance Company has conducted an independent review of the title documents and facts which were evidenced and researched by Graddon Consulting and Research, Inc. pertaining to the herein described properties. As part of its Contracted Services, it has agreed with the ownership findings of this Report and has issued its Title Insurance Litigation Guarantee based upon its findings and in support of its opinions.

Summaries, Analyses, and Opinions:

SECTION EIGHT:

Declaration:

Graddon Consulting and Research, Inc. (Hereinafter "GCR") has compiled an historical chain of ownership documents, maps, and other information relating to and encompassing the Subject Property owned by George W. Raab and Donna Marie Martinez (Hereinafter "You, Your") as well as relating to the Deeded Right of Way, Maintenance Property, over which there had been granted certain easements for specific railroad operation purposes; and, the As-Built Trackage and Alleged Right of Way – the area upon which the railroad constructed its tracks.

That information has been accumulated for purposes including, but not limited to, assisting You, Your attorney, GCR, Your appraisers, and Your other Consultants in analyzing certain property rights, benefits, and uses in which You have an interest.

The primary focus of the GCR discovery relates to the following matters:

- 1) Manner of Land Settlement (Federal Act) and associated relevant data.
- 2) History of the Parent Parcel relating to the Washington Territorial and State Subdivision Laws.
- 3) The date and manner of conveyance of the original Grant of the Railroad Right of Way to the *Seattle, Lake Shore, and Eastern Railroad Company* which is contiguous to Your Subject Property.
- 4) Chronological representations for the filing of the Map of Definite Location of the Railroad Right of Way, the Entry of the Patented Settler, and the issuance of the Patent.
- 5) The original possessory rights of the *Seattle, Lake Shore, and Eastern Railroad Company* to their Railroad Right of Way as those rights relate to fee simple ownership or easement benefits.
- 6) Current ownership of the underlying real property within the existing Railroad Right of Way.
- 7) Historically vested property rights pertaining to the underlying real property within the existing Railroad Right of Way.
- 8) Historically created Separate Lots and vested property uses, benefits, and rights pertaining to the Subject Property.
- 9) Insurable title ownership abstract information for purposes of Title Insurance or Litigation Guarantees relating to legal actions.

GCR has conducted specific ownership research of both recorded and unrecorded matters of public record for the purposes of creating an historical chain of ownership for the Subject Property establishing foundational evidence for the opinions rendered herein.

Herein, Stephen J. Graddon of GCR has offered his opinions in certain property ownership and land use matters that may affect Your Property and for which he is qualified.

Those opinions are based, in part, upon the GCR research of the ownership history of the Subject Property as well as upon his learned information and applied practices.

Maps used in this Report are meant to be representative and not prepared by a surveyor unless so noted.

Both GCR and Stephen J. Graddon intend to offer all opinions within the venues of their established expertise.

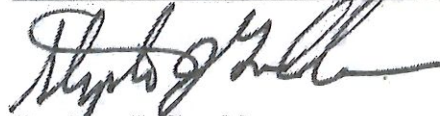
Neither Stephen J. Graddon nor any other member of GCR is an attorney nor intend to engage in the practice of law.

If You have questions relating to legal opinions, You should seek legal advice from Your attorney.

Prepared by :

Graddon Consulting and Research, Inc.

Signed this 25th day of September, 2001



Stephen J. Graddon

husband executes the same

Witness my hand and official seal the 22nd day
year in this certificate first above written

By Tallman

Notary Public in and for Washington Territory

Filed for record at the request of Burke and Waller May 9th 29 1887
at Linn's park P. M.

Lyman Wood
County Auditor

Bills Hedgcock et ux

Right of Way Deeds

to S. and O. R. Co.

In Consideration of the benefits
and advantages to accrue to us from the location construction
and operation of the Seattle Lake Shore and Eastern Railway in
the County of King in Washington Territory we do hereby grant
grant and convey unto said Seattle Lake Shore and Eastern
Railway Company a right of way one hundred (100) feet in
width through our lands in said County described as follows

Lot 3 and N. E. 1/4 of S. W. 1/4 Section 32 T
2 S. R. 6 E

Said right of way strip to be fifty (50) feet
in width on each side of the center line of the roadway track
as located across our said lands by the Engineer of said
Railway Company which location is described as follows to-wit:

Beginning at a point 3200 feet West from 1/4
Section corner on East boundary of Section 32 T 2 S
R. 6 E and running thence S 36° 36' W. 1710 feet to
south boundary of Lot 3 of said Section 32 said township, said
range which point is 1820 feet north and 350 feet East from
E. W. corner of said Section 32 said line is in lot 3 and
N. E. 1/4 of S. W. 1/4 of said section 32

And the said Seattle Lake Shore and Eastern Railway Company
shall have the right to go upon the land adjacent to said line for a

distance of two hundred (200) feet on each side thereof and cut down all trees dangerous to the operation of said road

to have and to hold the said premises with the appurtenances unto the said party of the second part and to its assigns forever

The witness whereof the parties of the first part have hereunto set their hands and seals this 6th day of May A.D. 1887

In presence of Bill Henry
John Ball Sawyer
 County of Washington
 State of District of Columbia

Witness my hand and seal this 6th day of May A.D. 1887

Notary Public in and for the District of Columbia

Bill Henry Sawyer

John Ball

BUSINESS and CONSULTING EXPERIENCE RESUME

Dated: September - 2001

Stephen J. Graddon

Graddon Consulting and Research, Inc.

P. O. Box 54083 253-835-0032
Redondo, WA 98054
Owner - President

Summit Land Company, Inc.

P. O. Box 54083 253-835-0032
Redondo, WA 98054
Owner - Broker

Licensed WA State Real Estate Broker:

Practiced Jurisdiction: King County, Washington State
License Duration: Approximately 35 years through present
History: Licensed as Real Estate Agent - May 1966
 Licensed as Real Estate Broker - March 1969
 Specialized Vacant Land Broker
 Directly Brokered more than 1,000 vacant land sales.

Land Use and Land Subdivision Consultant:

Primary Practiced Jurisdiction: King County, Washington State
Duration: More than 30 years through present
History: More than 400 land division projects

Consultant, Researcher, Analyst and Designated Applicant:

Expert in Historic Subdivision, Zoning, Property Rights, Ownership, and Use Matters which are vested and recognized under current laws, rules, and regulations.

Primary Practiced Jurisdiction: King County, Washington State
Duration: More than 30 years through present
History: More than 100 "vested property rights" consulting projects in past 5 years.

Administrative Appeals Consultant and Advocate:

Includes research, discovery, evidence production, writing, filing and arguing Administrative Appeals in cases of Governmental Denials of Applicant's Permits.

Primary Practiced Jurisdiction: King County, Washington State
Duration: More than 20 years through present

Forensic Researcher and Evidential Analyst:

Historic and Applied Federal, State, and Local Land Laws and Regulations
Geographic Emphasis - Provisional Territory of Oregon,
Territory of Oregon, Territory of Washington, and Washington State:

Title Abstract / Ownership Research:
Research includes all Matters of Public Records, both Recorded and
Unrecorded.

Easements and Rights of Way Research:
Railroad Rights of Way, Public Rights of Way, Private Rights of Way, Etc.

Litigation Land Use Consultant, Researcher, Analyst and Witness:
Includes Land Use Matters and Issues which are compliant with previous laws, rules, and regulations
and which are "vested" or considered "legal, non-conforming" under currently applied laws.

Primary Practiced Jurisdiction: King County, Washington State
Duration: Approximately 20 years through present
History: More than 40 cases in past 3 years
Graddon has consulted in approximately Fifty (50) settled litigations in the past four (4) years.
Graddon is currently consulting in approximately twenty six (20) pending land use litigations.

Contributing Author, Stakeholder, and Research Participant in Reviewing and
Implementing Certain Jurisdictional Land Use Policies, Codes, Rules, and
Regulations:

Graddon has collaborated with Governmental entities, primarily King County, in formulating written policies, public rules, and code changes relating to specific land use issues.